

rec'd # 1870
NO SUM
1538

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STEPHEN B. COREY,

PLAINTIFF,

VS.

SAMUEL J. NASSAN, III,
individually and in his capacity
as an officer of the Pennsylvania
State Police, the PENNSYLVANIA
STATE POLICE, and JEFFREY B.
MILLER, in his capacity as
commissioner of the Pennsylvania
State Police,

DEFENDANTS.

Civil Action No. 05-0114

1

COMPLAINT

JURISDICTION AND VENUE

1. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343(a)(4), and 42 U.S.C. §1983. This Court has jurisdiction to issue the requested declaratory relief pursuant to 28 U.S.C. §2201 and 28 U.S.C. §2202.
2. The actions complained of were committed within the jurisdiction of the United States District Court for the Western District of Pennsylvania.

PARTIES

3. The Plaintiff, Stephen B. Corey, is an adult citizen of the United States and a resident of Allegheny County, Pennsylvania, residing at 736 Greentree Road, Pittsburgh, Pennsylvania 15220.

4. The Defendant, Samuel J. Nassan, III, is an officer of the Pennsylvania State Police, stationed at the Pennsylvania State Police Station at 449 McCormick Road, Moon Township, Allegheny County, Pennsylvania 15108.

5. The Defendant, the Pennsylvania State Police, is a department of the Commonwealth of Pennsylvania headquartered at 1800 Elmerton Avenue, Harrisburg, Dauphin County, Pennsylvania 17110.

6. The Defendant, Jeffrey B. Miller, is the commissioner, and at all times material was, the commissioner of the Pennsylvania State Police.

7. At all times relevant, the Defendants acted under color of state law. At all times relevant, Defendant Samuel J. Nassan, III, acted within the scope of his employment with the Pennsylvania State Police.

GENERAL ALLEGATIONS

8. On June 25, 2004, while the Plaintiff was driving in a legal and proper manner on State Route 22/30 in Robinson Township, Allegheny County, Pennsylvania, Defendant Samuel J. Nassan, III, issued a traffic citation to the Plaintiff under the Pennsylvania Vehicle Code, 75 Pa. C.S. §3336(1). A true and correct copy of the said citation is attached hereto and marked "Exhibit A."

9. 75 Pa. C.S. §3336(1) concerns the proper way to signal other traffic vehicles for a left turn.

10. In describing on the citation the hand gesture allegedly given by Plaintiff, the Defendant Samuel J. Nassan, III, wrote that the Plaintiff "did give an improper hand signal while passing my patrol car namely middle finger up."

11. The sole reason the Defendant Samuel J. Nassan, III, gave the said traffic citation to the Plaintiff was not because he violated the cited section of the Vehicle Code, but because the Defendant Samuel J. Nassan, III, perceived the said hand gesture as insulting to the officer.

12. The courts of the Commonwealth of Pennsylvania and the United States of America have ruled that the finger gesture in question is Constitutionally protected free speech under the First Amendment of the United States Constitution.

13. Defendant Samuel J. Nissan, III, knew, or should have known, that the finger gesture in question was Constitutionally protected and was not a violation of Section 3336(1) of the Pennsylvania Vehicle Code.

14. As the employer of the Defendant Samuel J. Nissan, III, the Defendant Pennsylvania State Police, pursuant to its custom, pattern, practice or policy, failed to properly instruct Defendant Samuel J. Nissan, III, as to the proper interpretation of Section 3336(1) of the Pennsylvania Vehicle Code or the right of free speech of the residents of Pennsylvania.

15. As the commissioner of Pennsylvania State Police, Defendant Jeffrey B. Miller, pursuant to his custom, pattern, practice or policy, failed to properly supervise the Pennsylvania State Police, so that its police officers would follow the proper interpretation of Section 3336(1) of the Pennsylvania Vehicle Code and respect the right of free speech of the residents of Pennsylvania.

16. On November 23, 2004, the Plaintiff was adjudged not guilty by the Honorable Robert Gallo of the Court of Common Pleas of Allegheny County, Pennsylvania, when Defendant failed to appear at the hearing in this matter. A true and

correct copy of the Order of Court finding the Plaintiff not guilty is attached hereto and marked Exhibit B.

17. As a direct and proximate cause of the Defendants' actions, the Plaintiff has suffered the following injuries and damages:

- a. His right to free speech under the First Amendment of the United States Constitution, as applied to the states by the Fourteenth Amendment, has been violated;
- b. His right to due process of law under the Fourteenth Amendment of the United States Constitution has been violated by the arbitrary, capricious, and unreasonable application of the Pennsylvania Vehicle Code;
- c. His right to be free from malicious prosecution under the Fourth Amendment of the United States Constitution, as applied to the states by the Fourteenth Amendment, has been violated;
- d. He has had to expend funds to defend himself against the unjustified charges; and
- e. He has undergone pain and suffering, emotional trauma, humiliation and distress.

18. The Pennsylvania State Police and its commissioner, Jeffrey B. Miller, by virtue of custom, pattern, practice, training and/or policy, authorizes its police officers to act in an unconstitutional fashion by issuing citations under the Pennsylvania Vehicle Code against people who exercise their freedom of speech by using insulting finger gestures.

19. The Pennsylvania State Police and its commissioner, Jeffrey B. Miller, are deliberately indifferent to the misapplication of the Pennsylvania Vehicle Code to prosecute people engaged in Constitutionally protected expressive activities.

COUNT 1

20. The Defendants' application of 75 Pa. C.S. §3336(1) to issue a traffic citation to the Plaintiff for engaging in Constitutionally protected speech violated the First Amendment of the United States Constitution as it is applied to the states under the Fourteenth Amendment of the United States Constitution.

COUNT 2

21. The Defendants' prosecution of the Plaintiff without appropriate legal foundation violated the Plaintiff's Fourth Amendment right to be free from malicious prosecution, as that right is applied to the states under the Fourteen Amendment of the United States Constitution.

PRAYER FOR RELIEF


WHEREFORE, the Plaintiff, Stephen B. Corey, requests that this Honorable Court grants the following relief:

- a. Enter a declaratory judgment that the Defendants applied 75 Pa. C.S. §3336(1) in an unconstitutional fashion by citing the Plaintiff for allegedly making an insulting hand gesture.
- b. Enter a declaratory judgment that the Defendants the Pennsylvania State Police and Jeffrey B. Miller have a custom, practice, and/or policy of applying the

Pennsylvania Vehicle Code in an unconstitutional manner to retaliate against and to chill a citizen's First Amendment right to free speech.

- c. Enter an award for compensatory and punitive damages against all of the Defendants, jointly and severally, on an amount to be determined by the Court.
- d. Enter an award for costs, expenses, and counsel fees pursuant to 42 U.S.C. §1988; and
- e. Enter such other relief as this Honorable Court may deem just and deserving.

Respectfully submitted,


Joel M. Dresbold
Attorney for Plaintiff
Pa. I.D. No. 19730

432 Boulevard of the Allies
Pittsburgh, PA 15219
(412) 281-7066

CITATION NO. **M0215855-3**

TRAFFIC CITATION

1. Issuance District No. **05-2-43**

2. Date of Hearing **TR. 2122-06**

3. Address of Municipal District Office **5124 STEUBENVILLE PIKE MCKEES ROCK PA 15136**

4. Driver Number **19504512**

5. Defendant Name **STEPHEN J. COREY**

6. Expiration Address of Driver License **736 GREENTREE RD. PCH PA 15230**

7. Date of Birth **5/01/62**

8. Sex **M**

9. Race **W**

10. Eye Color **BRN**

11. Hair Color **BLK**

12. Height **5'7"**

13. Weight **160**

14. Blood Type **O**

15. Driver License Class **PA**

16. Driver License Status **Valid**

17. Driver License Expiration Date **05-07-05**

18. Driver License Issuance Date **05-07-05**

19. Driver License Issuance Location **PA**

20. Driver License Issuance Authority **PA**

21. Driver License Issuance Agency **PA**

22. Driver License Issuance Agency Address **PA**

23. Driver License Issuance Agency Phone **PA**

24. Charge

☐ Maximum Speed Limit

☐ Stop Sign & Yield Sign

☐ Driving Vehicle at Safe Speed

☐ Operation of Vehicle without Official Certificate of Inspection

☐ Driving while Operating Privilege is Suspended or Revoked

☐ Other **METHOD OF GIVING HAND & ARM SIGNAL**

25. Nature of Offense

☐ Speeding **MPH** Above **MPH**

☐ Operating Vehicle with Expired Inspection

☐ Operating Vehicle with Expired or Revoked License

☐ Violated 67 Pa. Code **Reg. 29 CFR**

☐ Driver Required to be Licensed

☐ Registration & Certificate of Title Required

☐ Unlawful Act/ies

☐ Traffic Control Signals

26. VEHICLE CODE TITLE 75

27. SEC **3336**

28. SUB SEC **(1)**

29. FINE **25**

30. E.M.S. **10.00**

31. CAT **30**

32. CCETS

33. ADPAT **10.00**

34. TOTAL DUE **575**

35. Location **RR 1 TO CAMPBELLS RUN**

36. Zone **10**

37. Date **05-23-05**

38. Time **11:55**

39. Day **MON**

40. County **ALLEGHENY**

41. Precinct **115**

42. Date of Issue **05-23-05**

43. Date of Hearing **05-23-05**

44. Officer's Signature **FILED**

45. Date of Issue **05-23-05**

46. I certify that the facts set forth in this citation are true and correct to the best of my knowledge, information and belief. This certification is made subject to the penalties of Section 4304 of the Criminal Code (18 Pa.C.S. § 4304) relating to unsworn statements to authorities.

47. Officer's Signature **OFFICER'S SIGNATURE**

48. Officer's Name **OFFICER'S NAME**

49. Officer's Badge Number **525627**

50. Officer's Date of Birth **05-05**

51. Officer's Date of Issue **PA PSP 1100**

52. THIS CITATION HAS BEEN ISSUED BY A MEMBER OF THE PENNSYLVANIA STATE POLICE, HARRISBURG, PA. 17110.

53. Speed Testing Device Operator

54. Speed Equip. Serial No.

55. Station Equip. Tested

56. Date Equip. Tested

57. Accident Report No.

58. Accident Report Date

59. Accident Report Time

60. Accident Report Location

61. Accident Report Description

62. Accident Report Date

63. Accident Report Time

64. Accident Report Location

65. Accident Report Description

66. Accident Report Date

67. Accident Report Time

68. Accident Report Location

69. Accident Report Description

70. Accident Report Date

71. Accident Report Time

72. Accident Report Location

73. Accident Report Description

74. Accident Report Date

75. Accident Report Time

76. Accident Report Location

77. Accident Report Description

78. Accident Report Date

79. Accident Report Time

80. Accident Report Location

81. Accident Report Description

82. Accident Report Date

83. Accident Report Time

84. Accident Report Location

85. Accident Report Description

86. Accident Report Date

87. Accident Report Time

88. Accident Report Location

89. Accident Report Description

90. Accident Report Date

91. Accident Report Time

92. Accident Report Location

93. Accident Report Description

94. Accident Report Date

95. Accident Report Time

96. Accident Report Location

97. Accident Report Description

98. Accident Report Date

99. Accident Report Time

100. Accident Report Location

NOTICE

If you plead guilty or are found guilty, points may be assessed against your driver's record. An accumulation of points may result in the suspension of your driving privilege. Also, your driving privilege WILL BE SUSPENDED if you plead guilty or are found guilty of certain offenses under the Vehicle Code, including but not limited to, 75 Pa.C.S. §§ 1371, 3341, 3345, 3367, 3718, 3733, 3734, 3736, subsequent convictions of 75 Pa.C.S. § 1501, a violation of 75 Pa.C.S. § 3061 when occurring in an active work zone and an accident report is submitted by the police, and a violation of 75 Pa.C.S. § 3062 when occurring in an active work zone.

SP 7-0217A
ADPC 405C-05 (Rev. 6-2003)

DISTRICT JUSTICE **M0215855-3**

Case 2:05-cv-00114-JFC Document 1 Filed 02/01/05 Page 8 of 10
IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY PENNSYLVANIA
SUMMARY APPEALS BRANCH

COMMONWEALTH OF PENNSYLVANIA

CL# 2192 OF 04

VERSUS

STEPHEN COREY

ORDER OF COURT

APPLICABLE BOX CHECKED BELOW

DATE: NOVEMBER 23, 2004

- ☒ DEFENDANT ADJUDGED NOT GUILTY UPON COMPLAINANTS FAILURE TO APPEAR.
- ☐ DEFENDANT ADJUDGED GUILTY HAVING FAILED TO APPEAR. JUDGEMENT IS ENTERED ON THE JUDGEMENT OF THE ISSUING AUTHORITY PURSUANT TO PA. RULES OF CRIMINAL PROCEDURE 462(D), 42 PA C.S.A.
- ☐ APPEAL DISMISSED. DEFENDANT AND COMPLAINANT FAILED TO APPEAR. COMMONWEALTH RESTS ON THE RECORD. JUDGMENT AND SENTENCE OF THE LOWER COURT IS UPHELD.
- ☐ DEFENDANT IS ADJUDGED GUILTY. SENTENCE BELOW*.
- ☐ DEFENDANT IS FOUND GUILTY OF A REDUCED CHARGE. _____ SENTENCE BELOW*.
- ☐ DEFENDANT IS ADJUDGED NOT GUILTY.
- ☐ WITHDRAWN BY COMMONWEALTH
- ☐ OTHER _____

*APPLICABLE
SENTENCE:

FINE PLUS COSTS

ALL FINES, FEES, COSTS AND APPLICABLE RESTITUTION (IF ANY) PAYABLE TO THE CLERK OF COURTS OF ALLEGHENY COUNTY IN 60 DAYS OR THROUGH THE CLERK OF COURTS AS ARRANGED.
ALL JAIL SENTENCES TO BE EFFECTUATED BY SUMMARY APPEALS COURT!!!

BY THE COURT,



ORIGINAL CONVICTION: 9/1/04

CHARGE: 3331

CITATION: M0215355-3

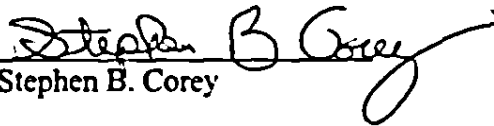
TRNT: TR-2122-04

IF APPLICABLE, DEFENSE HAS THIRTY (30) DAYS FROM THE DATE OF THIS ORDER
TO FILE AN APPEAL TO THE SUPERIOR COURT

Exhibit B

VERIFICATION

I, Stephen B. Corey, verify, under penalty of perjury, that the allegations in the foregoing Complaint are true and correct to the best of my personal knowledge, information and belief.


Stephen B. Corey

Date: 1-31-05

05-0114

JS 44 (Rev. 11/84)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

STEPHEN B. COREY

(b) Country of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Allegheny

DEFENDANTS SAMUEL J. NASSAN, III,
THE PENNSYLVANIA STATE POLICE,
JEFFREY B. MILLER

Country of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

Allegheny

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's Firm Name, Address, and Telephone Number

Joel M. Dresbold, 432 Boulevard of the
Allies, Pittsburgh, PA 15219, 412-281-7066

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Act <input type="checkbox"/> 140 Negligence Insurance <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 160 Maritime Act <input type="checkbox"/> 170 Recovery of Debit/Debit Student Loans (Land, Veterans) <input type="checkbox"/> 180 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 190 Stockholders' Suits <input type="checkbox"/> 200 Other Contract <input type="checkbox"/> 210 Contract Product Liability <input type="checkbox"/> 220 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 363 Personal Injury - Product Liability <input type="checkbox"/> 364 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Consumer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of For Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceedings
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC §1983

Brief description of cause:

Violation of freedom of speech for issuing citation for gesture.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Feb. 1, 2005

Joel M. Dresbold

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____